IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7290 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LUMBAJI KHIMAJI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR VIJAY H PATEL for Petitioner(s) : 1,
MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/02/2006

ORAL JUDGMENT

1.By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Collector and Controller of

Food and Civil Supplies, Ahmedabad dated 19.9.2005 in confiscating the goods such as Wheat, Dal, Rice etc., for an amount of Rs.20,000/- as well as the order passed by the Revisional Authority i.e. the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar dated 30.7.1996 in dismissing the same and confirming the order passed by the Additional Collector and Controller of Food and Civil Supplies, Ahmedabad.

2. The father of the petitioner was granted the authorization to run the Fair Price Shop. On the basis of the inspection carried out on 13.6.1995 and the irregularities found on that date, a show-cause notice came to be issued on 25.7.1995 calling upon the petitioner to show cause as to why the goods seized should not be confiscated and the allegations are set out which are mentioned in the show-cause notice dated 25.7.1995, which is annexed to the petition and the petitioner replied to the said show-cause notice and after considering the explanation given by the petitioner, an order came to be passed to confiscate the goods worth Rs.20,000/- only against the seizure of the goods worth Rs.40,000/-. Being aggrieved and dissatisfied with the order passed by the Additional

Collector and Controller of Food and Civil Supplies, Ahmedabad in confiscating the goods worth Rs.20,000/-, the petitioner preferred revision application before the State of Gujarat and the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar by its order dated 30.7.1996 dismissed the said revision application. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Ms. Femina Chhapatvala, learned advocate appearing on behalf of the petitioner while relying upon the decision of the Hon'ble Supreme Court in case of ***N. Nagendra Rao & Co. V/s. State of Andhra Pradesh*** reported in **A.I.R. 1994 Supreme Court Page-2663** has submitted that considering the allegations and irregularities alleged against the petitioner, they are of technical nature and therefore, the orders passed by both the authorities below confiscating the goods worth Rs.20,000/- are excessive and in the facts and circumstances of the case, the same are not warranted. She has also drawn the attention of the Court to the allegations levelled in the show-cause notice and has

submitted that some of the allegations are of technical nature and therefore, it is requested to allow the present Special Civil Application by reducing the penalty and by reducing the quantity of goods while upholding the order of confiscation.

4. Shri Prachchhak, learned AGP while relying upon the orders passed by the Additional Collector and Controller of Food and Civil Supplier, Ahmedabad as well as the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar has submitted that it might be that one or two allegations/irregularities are of technical nature but so far as other allegations/irregularities are concerned, they are very serious in nature and in fact, considering the explanation given by the petitioner, even the Additional Collector and Controller of Food and Civil Supplies, Ahmedabad himself has reduced the penalty and confiscated the goods worth Rs.20,000/- only and the same is confirmed by the Revisional Authority and therefore, it is not required to be interfered with by this Court exercising powers under Articles 226 and 227 of the Constitution of India, and therefore, it is requested to dismiss the present Special Civil

Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. I have gone through the allegations and the irregularities alleged against the petitioner and it might be true that one or two allegations/irregularities might be of technical nature but so far as the allegation No.5 by which the Wheat, Dal, Rice were found to be in excess than the required stock and therefore, the same cannot be said to be technical one and it is a serious irregularity. The excess of goods are found and therefore, the only presumption which can be drawn is that the petitioner might be giving less quantity to the poor consumer. Considering the aforesaid facts and even the explanation submitted by the petitioner, even the Additional Collector and Controller of Food and Civil Supplies, Ahmedabad himself has reduced the penalty and confiscated the goods worth Rs.20,000/- only against the seizure of the goods worth Rs.40,000/-. There are concurrent findings of fact by both the authorities below and considering the nature of allegations and the irregularities proved against the petitioner, it cannot

be said that the order passed by both the authorities below are in any way illegal and/or arbitrary and/or contrary to the evidence on record, which calls for the interference of this Court exercising powers under Articles 226 and 227 of the Constitution of India.

7. For the reasons stated above, the petition fails. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.